Chandka

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

REVIEW PETITION NO. 150 OF 2007
IN
WRIT PETITION NO. 6742 OF 2003

Kamleshsingh H. Chowhan ..Petitioner

versus

Parekh & Company & Anr. ..Respondents

Mr. Vivek Kantawala i/b. M/s. Vivek Kantawala & Co. for the Petitioner.

Mr. Udaipuri i/b. M/s. Udaipuri & Co. for the Respondents.

CORAM : S. A. BOBDE, J.
DATE : 18TH DECEMBER, 2007.

P.C.

. Learned counsel for the Review Petitioner prays for review of the direction in paragraph 8 of the Order dated 11.3.2004 whereby this court has directed the petitioner to withdraw not more than six anna proportionate share for the rent as and when directed by the trial court on such terms and conditions the trial court may consider appropriate.

2. According to the learned counsel, the Review

Petitioner who is undoubtedly a co-owner should be allowed to withdraw the entire rent since he alone is taking steps to protect the property and institute the suit. That may be correct. However, in view of the fact fairly admitted by the learned counsel for the Review Petitioner that there is a pending dispute between the co-owners regarding partition and division of the property, I see no reason to review the said direction which allows the Review Petitioner to withdraw a share which is roughly proportionate to his entitlement in the property. Mr. Kantawala relied upon the Order of the Single Judge of this Court dated **17.11.2003 in Civil Application No. 847 of 2003 in Writ Petition No. 7110 of 2002 (Smt. Chandrakumari Harnamsingh Chowhan & Anr. vs. Mr. Hakimbhai Esmaiji & Co.)** in which the petitioner was allowed to withdraw the entire amount on his agreeing to indemnify the tenant in respect of any claim made by the tenant. There is undoubtedly order to the above effect. However, it does not appear from the order that this court was aware of the pending dispute between the co-owners. Hence, the Review Petition is rejected.

3. However, in the order under Review paragraph

8 last two lines instead of words "may deposit the amount as directed above within a period of four months from today" the words shall be "shall deposit the amount within a period of twelve weeks from today."

(S. A. BOBDE, J.)